IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1574 OF 2007
(Ramsunder Loknath Tiwari .v. Manager, SGS (India) Ltd. and another)

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S.A. Kalbande, Advocate for the petitioner.
Shri S.K. Pashine, Advocate for the respondent No.1.

CORAM : R.V. MORE, J.
7TH DECEMBER, 2007

Heard the learned Counsel appearing on behalf of the respective parties.

The petitioner, by filing instant writ petition, takes exception to the order of the Labour Court whereby the exparte award in his favour came to be set aside subject to costs of Rs.500/-.

The petitioner was appointed as a Driver by the first respondent. His service came to be terminated and, therefore, he was constrained to challenge the said termination by raising dispute before Conciliation Officer. The conciliation proceedings ended in failure, therefore, appropriate government made reference to the learned Labour Court at Nagpur.

In Labour Court, the petitioner examined himself and the first respondent examined one Shri Shrinivas. Thereafter, the respondent No.1 in spite of several opportunities failed to lead any other evidence and therefore on 23.02.2005, order of closing evidence of respondent No.1 was passed and the matter was proceeded for argument. The arguments were heard on 24.02.2005. The respondent No.1 was not present on both these dates. The learned Labour Court passed an award on 28.02.2005, directing the petitioner's reinstatement with full back wages.

The respondent No.1 thereafter filed Miscellaneous Civil Application No. 49/2000 for restoration of above reference by setting aside ex parte order dated 28.02.2005 and for decision of the case on merit.

The said application came to be disposed of by the Presiding Officer, 3rd Labour Court and the same was allowed. The learned Presiding Officer has observed that initial date for leading evidence of respondent No.1 was given as 23.03.2005. Subsequently it was preponed to 23.02.2005 and for want of knowledge of preponement of date the learned Counsel appearing for the respondent No.1 could not remain present. On the next date, i.e. 24.02.2005, the petitioner's arguments were heard but

the respondent No.1 or his Counsel was not aware about this date and ultimately on 28.02.2005 an award came to be passed. The learned Judge came to the conclusion that case for restoration by setting aside exparte order is made out by the respondent No.1 and accordingly aforesaid application came to be allowed subject to payment of costs of Rs.500/- to be paid to the petitioner.

I see no error or perversity in aforesaid finding of the learned Labour Court and, therefore, there is no reason to interfere in my jurisdiction under Article 226 and 227 of the Constitution of India.

Shri S.A. Kalbande, the learned Counsel for the petitioner submits that the award is not exparte. The submission is without any merit. As stated above, the respondent No.1 examined his witness. However, for want of knowledge of the date, he could not lead other evidence or advance the arguments. In this view of the matter, I am of the opinion that the award cannot be said to be on merit and the learned Presiding Officer, Labour Court rightly restored the Reference IDA No. 49/2000 by setting aside the ex parte award.

In the facts and circumstances mentioned above, I dismiss the petition with no order as to costs. The services of the petitioner came to be terminated way back in the year 1999. He is out of service since last

more than eight years. In this view of the matter and in the interest of justice, I feel it appropriate to direct the learned Presiding Officer, Labour Court, Nagpur to dispose of the Reference IDA No. 49/2000 as expeditiously as possible and in any case within a period of three months from the date of receipt of this order.

JUDGE

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